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Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 8 November 2005 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Australia to the United Nations presents its compliments to the Security Council Committee established pursuant to resolution 1540 (2004) and, with reference to the Committee note verbale dated 19 August 2005, has the honour to transmit the second part of the Government of Australia pursuant to Security Council resolution 1540 (2004) (see annex).

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Annex to the note verbale dated 8 November 2005 from the Permanent Mission of Australia to the United Nations addressed to the Chairman of the Committee

Australia's report on the implementation of Security Council resolution 1540 (2004): Additional information

Introduction

As stated in Australia's *Report on the Implementation of Security Council resolution 1540 (2004)*, Australia is a strong supporter of efforts to prevent the proliferation of WMD through compliance with multilateral arms control and non-proliferation treaties. Australia is a State Party to the *Nuclear Non-Proliferation Treaty* (NPT), *Chemical Weapons Convention* (CWC) and *Biological Weapons Convention* (BWC).

Australia is fully committed to the work of the UNSCR 1540 Committee in ensuring global implementation of this resolution, including, where appropriate, by providing assistance to others.

In keeping with this commitment, Australia provides the following responses to the issues raised in Ambassador Motoc's letter of 19 August 2005.

National legislation and other legal measures Australia has implemented or intends to implement to prohibit non-State actors to manufacture, acquire, possess, develop, transport, transfer, use nuclear, biological weapons and their means of delivery as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice or assist them.

Nuclear Weapons and Related Material

The South Pacific Nuclear Free Treaty Act 1986

This Act gives effect to certain obligations that Australia has as a party to the South Pacific Nuclear Free Zone Treaty, and for related purposes. Under this Act

- s8(1) A person who undertakes or engages in the manufacture or production of a nuclear explosive device is guilty of an offence.
- s8(2) A person who acquires a nuclear explosive device is guilty of an offence against this subsection.
- s9. A person who undertakes or engages in research or development for the purpose of, or directed towards, the manufacture or production (whether by that person or otherwise) of a nuclear explosive device is guilty of an offence against this section.
- s10. A person who:
  - (a) possesses a nuclear explosive device; or
  - (b) has control over a nuclear explosive device;

  is guilty of an offence against this section
- s11. A person who stations, or does any act or thing to facilitate the stationing of, a nuclear explosive device in Australia is guilty of an offence against this section. ["Stationing" means implantation, emplacement, transportation on land or inland waters, stockpiling, storage, installation and deployment.]
- s12. A person who undertakes or carries out a test of a nuclear explosive device is guilty of an offence against this section.
- s13. A person who does any act or thing to facilitate the manufacture, production, acquisition or testing by any person (including a foreign country) of a nuclear explosive device (whether in or outside Australia) is guilty of an offence against this section.
- s16. The penalty on conviction of an offence against subsection 8(1) or (2) or section 9, 10, 11, 12 or 13 is:
  - (a) if the offender is a natural person—a fine not exceeding $100,000 or imprisonment for a period not exceeding 20 years, or both; or
  - (b) if the offender is a body corporate—a fine not exceeding $500,000.

This Act extends to every external Territory.

The Comprehensive Nuclear Test Ban Treaty (CTBT) Act 1998

This Act provides for implementation of the Comprehensive Test Ban Treaty ahead of its entry into force, in line with general obligations under the Nuclear Non-Proliferation Treaty. This Act makes it an offence punishable with life imprisonment to cause a nuclear weapon test explosion or any other nuclear explosion.

Part 2 Section 8 – A person who causes a nuclear weapon test explosion or any other nuclear explosion is guilty of an offence. Penalty: Imprisonment for life.

The Weapons of Mass Destruction Act 1995

This Act prohibits the supply or export of goods that will or may be used in the provision of services that will or may assist, the development, production, acquisition or stockpiling of weapons capable of causing mass destruction or missiles capable of delivering such weapons. Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

- s9(1) If:
  - (a) a person supplies any goods to another person; and
  - (b) the first-mentioned person believes or suspects, on reasonable grounds, that the goods will or may be used in a WMD program; and
  - (c) the supply of the goods is not authorised by a permit or is in contravention of a condition stated in a permit; and
  - (d) the Minister for Defence has not given a written notice to the first-mentioned person under section 12 stating that the Minister has no reason to believe or suspect that the goods will or may be used in a WMD program;

  the first-mentioned person is guilty of an offence punishable on conviction by imprisonment for not more than 8 years

- s10(1) If:
  - (a) a person exports any non-regulated goods; and
  - (b) the person believes or suspects, on reasonable grounds, that the goods will or may be used in a WMD program; and
  - (c) the export of the goods is not authorised by a permit or is in contravention of a condition stated in a permit; and
  - (d) the Minister for Defence has not given a written notice to the person under section 12 stating that the Minister has no reason to believe or suspect that the goods will or may be used in a WMD program;

  the person is guilty of an offence punishable on conviction by imprisonment for not more than 8 years.

- s11(1) If:
  - (a) a person provides any services to another person; and
  - (b) the first-mentioned person believes or suspects, on reasonable grounds, that the services will or may assist a WMD program; and
  - (c) the provision of the services is not authorised by a permit or is in contravention of a condition stated in a permit; and
  - (d) the Minister for Defence has not given a written notice to the first-mentioned person under section 12 stating that the Minister has no reason to believe or suspect that the provision of the services will or may assist a WMD program;

  the first-mentioned person is guilty of an offence punishable on conviction by imprisonment for not more than 8 years.

The Criminal Code

Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility. The territorial reach of legislation (possibly covering non-State) actors is addressed through Chapter 2, Part 2.7, Division 15.1 Extended geographical jurisdiction.

Biological Weapons and Related Material

Please see pages 5 and 6 of Australia's *Report on the Implementation of UN Security Council Resolution 1540* (the Report) detailing the *Nuclear Non-Proliferation (Safeguards) Act 1987*, the *Chemical Weapons (Prohibition) Act 1994*, the *Crimes (Biological Weapons) Act 1976* and the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*.

In particular, section 8 of the *Crimes (Biological Weapons) Act* places a restriction on the development, production, stockpiling, acquisition or retention of certain biological agents and toxins and biological weapons.

Section 8(1) makes it an offence for a person or a corporation to develop, produce, stockpile or otherwise acquire or retain microbial or other biological agents, or toxins that have no justification for prophylactic, protective or other peaceful purposes, or weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Section 8(2) provides for penalties, on conviction for an offence against subsection (1):

- in the case of a corporation – by a fine not exceeding $200,000, and
- in the case of a natural person – by a fine not exceeding $10,000, or by imprisonment for a specified period or for life, or both.

Under section 6A of the *Crimes (Biological Weapons) Act*, Chapter 2 of the *Criminal Code Act 1995* (the Criminal Code) applies in relation to these offences. As explained at pages 6 and 7 of the Report, chapter 2 extends criminal liability to all those who attempt to commit federal offences, or participate in them as an accomplice or otherwise assist (by aiding, abetting, counselling or procuring) in the commission of a federal offence.

As noted at page 6 of the Report, Part 5.3 of the Criminal Code, dealing with terrorism, is also relevant. Section 100.1 sets out a detailed definition of what constitutes a 'terrorist act'. Under section 100.4, part 5.3 applies to all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made, or the action, if carried out, would occur); and all actions (preliminary acts) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur). The following sections are relevant:

- section 101.1 – a person commits an offence if the person engages in a terrorist act. Penalty: Imprisonment for life. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 101.4(1) – a person commits an offence if: the person possesses a thing; and the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and the person knows of the connection. Penalty: Imprisonment for 15 years. It is irrelevant that the terrorist act does not occur. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 101.4(2) – a person commits an offence if: the person possesses a thing; and the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and the person is reckless as to the existence of the connection. Penalty: Imprisonment for 10 years. It is irrelevant that the terrorist act does not occur. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 101.6 – a person commits an offence if the person does any act in preparation for, or planning, a terrorist act. Penalty: Imprisonment for life. It is irrelevant that the terrorist act does not occur. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 101.5(1) – a person commits an offence if: the person collects or makes a document; and the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and the persons knows of the connection. Penalty: Imprisonment for 15 years. It is irrelevant that the terrorist act does not occur. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 101.5(2) – a person commits an offence if: the person collects or makes a document; and the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and the person is reckless as to the existence of the connection. Penalty: Imprisonment for 10 years. It is irrelevant that the terrorist act does not occur. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 102.7(1) – a person commits an offence if the person intentionally provides to an organisation support or resources that would help the organisation directly or indirectly engage in, prepare, plan, assist in or foster the doing of a terrorist act (whether or not the terrorist act occurs), and the organisation is a terrorist organisation, and the person knows the organisation is

a terrorist organisation. Penalty: Imprisonment for 25 years (in the case of recklessness: imprisonment for 15 years).

In relation to financing terrorist activities, the following sections are relevant:

- section 102.6(1) – a person commits an offence if the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and the organisation is a terrorist organisation, and the person knows the organisation is a terrorist organisation. Penalty: Imprisonment for 25 years. Category D extended geographical jurisdiction (under section 15.4) applies.

- section 103.1(1) – a person commits an offence if the person provides or collects funds and the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act. Penalty: Imprisonment for life. It is irrelevant that the terrorist act does not occur. Category D extended geographical jurisdiction (under section 15.4) applies.

In September 2005 the Australian Government also became a signatory to the International Convention for the Suppression of Nuclear Terrorism.

Planned action

The Australian Government has recently announced the strengthening of Australia's counter-terrorism laws. These new laws are designed to better deter, prevent, detect and prosecute acts of terrorism.

1. Control orders

A new regime to allow the Australian Federal Police (AFP) to seek, from a court, 12-month control orders on people who pose a terrorist risk to the community.

2. Preventative Detention

A new preventative detention regime that allows detention for up to 48 hours in a terrorism situation.

3. Notice to produce

A new notice to produce regime to facilitate lawful AFP requests for information that will assist with the investigation of terrorism and other serious offences.

4. Access to passenger information

Provide access to airline passenger information for the Australian Security and Intelligence Organisation (ASIO) and the AFP.

5. Stop, question and search powers

Extend stop, question and search powers for the AFP where there are reasonable grounds that a person might have just committed, might be committing, or might be about to commit a terrorism offence.

6. Strengthening existing offences and creating new offences

Create new offences for:

- leaving baggage unattended within the airport precinct, and
- updating the existing sedition offence, to address problems with those who communicate inciting messages directed against other groups within our community.

7. Strengthen existing offences for financing of terrorism, providing false or misleading information under an ASIO questioning warrant and for threatening aviation security.

8. Terrorism offences in the Criminal Code will be clarified and the criteria for listing terrorist organisations extended to cover organisations that advocate terrorism. This will be another issue that will be discussed with the States and Territories.

9. Terrorist financing

Improve Australia's terrorism financing regime through strengthening criminalisation of the financing of terrorism, ensuring coverage of alternative remittance dealers, wire transfers and cash couriers. The Government will investigate with the States and Territories further measures to ensure charities are not misused to channel funds to terrorists.

State and Territory leaders have agreed to enact legislation to give effect to measures which, because of constitutional constraints, the Commonwealth could not enact, including preventative detention for up to 14 days and stop, question and search powers in areas such as transport hubs and places of mass gathering.

It was agreed the new laws would be reviewed in five years time and that powers under the new laws would sunset after 10 years. The laws are currently in the process of being drafted for consideration by Parliament.

The Australian Government is currently in the process of implementing the Convention on the Marking of Plastic Explosives for the Purposes of Detection (MARPLEX Convention). The MARPLEX Convention is the twelfth United Nations Counter-Terrorism instrument to be implemented by Australia.

Laws and regulations as well as law enforcement efforts your Government has taken or intends to take to develop, maintain appropriate national measures to account for, secure and physically protect nuclear, chemical, biological weapons and their means of delivery, including related materials

Nuclear Weapons and related material

The Nuclear Non-Proliferation (Safeguards) Act 1987

The Safeguards Act gives effect to Australia's obligations under:

- the Nuclear Non-Proliferation Treaty
- Australia's safeguards agreement and Additional Protocol with the IAEA
- agreements between Australia and various countries (and Euratom) concerning transfers of nuclear items and cooperation in peaceful uses of nuclear energy, and
- the Convention of the Physical Protection of Nuclear Material (CPPNM)

The Safeguards Act also establishes a system for control over nuclear material and associated items in Australia through requirements for permits for their possession and transport. Communication of information contained in sensitive nuclear technology is also controlled through the grant of authorities.

- Part II, Section 13 *Permit to possess nuclear material or associated* items includes physical security, accounting for, storage, use, alteration, dispersal or disposal of nuclear material or items and communication of associated technology.
- Part II, Section 14 *Permit not granted to the owner or operator of a facility unless Director satisfied as to certain matters* includes procedures and physical security for nuclear material and associated items.
- Part II, Section 15 *Permit not granted where nuclear material etc to be held outside nuclear facility unless Director* [Director General of the Australian Safeguards and Non-Proliferation Office] *satisfied as to certain matters* addresses nuclear material or associated items held otherwise than at a nuclear facility.
- Part II, Section 16 *Special transport permit* sets provisions that require permit holders to account for and secure transport of nuclear material.
- Part II, Section 16A *Permit to establish a facility* includes appropriate procedures at the facility for the implementation of the Australian safeguards system in relation to nuclear material and associated items to be stored or used at the facility and adequate physical security applied to nuclear material and associated items at the facility.

- Part II, Section 18 *Authority to communicate information* includes restrictions and conditions on communication of associated technology

- Part III, Section 23 *Possession of nuclear material or associated items without permit* addresses offences relating to possession of nuclear material or associated items without a permit.

- Part III, Section 24 *Special provisions for carriers* addresses offences relating to possession and transport of nuclear material or associated items without a permit

- Part III, Section 25 *Breach of condition of permit or authority etc.* addresses offences relating to breach of permit.

- Part III, Section 25A *Breach of duty to ensure security of associated technology* addresses offences relating to security of associated technology.

- Part III, Sections 26 and 26A *Unauthorised communication of information* and *Communication prejudicing security of nuclear material or associated items* addresses offences related to unauthorised communication of information.

- Part III, Section 28A *Establishment of a facility without permit* addresses offences relating to establishing a facility without a permit

- Part III, Section 31A *Unauthorised access to areas etc. to which access is restricted under permit* addresses offences related to unauthorised access.

- Part III, Section 33 *Stealing nuclear material* addresses offences relating to the Physical Protection Convention specifically stealing nuclear material.

- Part III, Section 34 *Demanding nuclear material by threat* addresses offences relating to the Physical Protection Convention specifically demanding nuclear material by force or intimidation.

- Part III, Section 35 *Use of nuclear material causing injury to person or damage to property* addresses offences relating to the Physical Protection Convention specifically injury to persons or damage to property.

The Australian Protective Services Act 1987

This Act establishes an Australian Protective Service. Under this Act, protective services offices can arrest (in some cases) without warrant people who they suspect on reasonable grounds of commiting offences under the Safeguards Act.

Chemical Weapons and related material

The *Chemical Weapons (Prohibition) Act 1994* requires permit holders for production or use of CWC Scheduled chemicals to report their past and prospective annual activity. Permits are required for those facilities whose activities exceed certain annual thresholds, based on the risk associated with the given Schedule for transparency and non-proliferation purposes.

Part 6 of the *Chemical Weapons (Prohibition) Act 1994* also outlines relevant offences associated with the production or use of Scheduled chemicals. These following sections are relevant:

- section 77(1) – a person is guilty of an offence if he or she produces, acquires, retains or uses chemicals listed in Schedule 1 of the *Chemical Weapons Convention* at a facility without an appropriate permit, or transfers Schedule 1 chemicals from that facility without a permit. Penalty: Imprisonment for 5 years or 500 penalty units, or both. (A 'penalty unit' is $110 (S.4AA, Crimes Act 1914 (Commonwealth)).

- section 77(2) – a person is guilty of an offence if he or she produces, processes or consumes chemicals listed in Schedule 2 of the *Chemical Weapons Convention* at a facility without an appropriate permit. Penalty: Imprisonment for 2 years or 250 penalty units, or both.

- Section 77(3) – a person is guilty of an offence if he or she produces a chemical listed in Schedule 3 of the *Chemical Weapons Convention* without a permit. Penalty: 250 penalty units.

As part of the conditions in issuing permits, the Australian Safeguards and Non-Proliferation Office (ASNO) requires that certain chemical security measures be implemented for non-proliferation and counter-terrorism purposes. The permit holder must provide ASNO with:

- A statement of site security arrangements;
- Immediate notice of any unexplained loss, theft or suspicious incidents that involve CWC Scheduled chemicals;
- Where closure of the company is proposed, prior written advice and disposal details for excess stocks of CWC Scheduled chemicals, including quantities transferred or destroyed;
- A description of security measures for the physical protection of CWC Scheduled chemicals, with annual updates;
- Prior written advice if any Schedule 1 chemical is to be produced that has not already been applied for; and

- Where possible, written advice prior to any alterations to contact details, ownership, company name or address.

Biological Weapons and Related Materials

As noted at page 3 of the Report, Australian Federal and State jurisdictions have a considerable amount of health, safety and environmental legislation that controls access to hazardous materials, some of which may include WMD materials. Relevant Federal legislation includes the *Quarantine Act 1908*, the *Crimes Act (Biological Weapons)1976*, the *Chemical Weapons (Prohibition) Act 1994*, the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*, the Criminal Code, and the *Customs Act 1901*.

The *Gene Technology Act 2000*, supported by the *Gene Technology Regulations 2001*, establishes a nationally consistent system for regulating 'dealings' with genetically modified organisms (GMOs). Each Australian state and territory has enacted, or has agreed to enact, corresponding legislation.

For the purposes of the *GT Act*, a GMO is a viable biological entity that has been modified by modern genetic techniques, or an organism that has inherited the traits of another organism modified by such techniques. 'Dealing' with a GMO is defined as conducting experiments, making, developing or producing a GMO, breeding, propagating, growing or raising a GMO, and importing, possessing, using or transporting a GMO. The *GT Act* regulates dealing with all GMOs and, depending on the dealing, may impose conditions such as containment requirements.

The Gene Technology Regulator also certifies containment facilities known to be used for gene technology work and some not used for gene technology work. Certification is not granted until the facility has been inspected by the Office of the Gene Technology Regulator (OGTR). Reinspection is required at regular intervals, usually every 2 to 3 years. These inspections cover the physical structure and the procedures used in the facility.

Together with State and Territory Governments, the Australian Government has launched a process to review laws and regulations governing the security of biological agents in Australia. A likely outcome of this review is the development of a comprehensive legislative regime to regulate the storage, possession, use and transport of hazardous biological agents.

Further details on appropriate national export and trans-shipment controls, including appropriate penalties for violations of controls, over nuclear, chemical, biological weapons and their means of delivery, including related materials.

Export Controls: Legal Regime

Australian export controls are primarily enabled under the *Customs Act* 1901 and executed through the Regulation 13E of the *Customs (Prohibited Exports) Regulations 1958.* Controlled goods being exported from or transhipped via Australia are subject to control under Regulation 13E.

The *Customs Act 1901* only applies to tangible items prescribed in Australia's control list. The definition of export under this Act must involve the physical crossing of Australia's national borders by the prescribed tangible items.

The *Customs Act* applies civil and criminal penalties to breaches of export controls. Section 233 of the Act stipulates a person shall not export prohibited exports. Section 233BAB provides for penalties for offences under S.233. The penalty on conviction for an offence under S.233 for the export of Tier 2 goods (nuclear, chemical, biological weapons and their means of delivery, including related materials), is a fine not exceeding 2,500 penalty units or imprisonment for 10 years, or both. A 'penalty unit' is $110 (S.4AA, Crimes Act 1914 (Commonwealth)). The fine therefore does not exceed $275,000.

The *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* provides catch-all controls for goods an dservices not regulated by the Prohibited Export Regulations. The WMD Act controls the supply of WMD related goods from Australia and the provision of related services, both within and outside of Australia. Civil and criminal penalties, including significant fines and imprisonment, can be imposed for breaches of the WMD Act.

Transhipment

Goods passing through Australian ports as transhipped goods are subject to the same export controls as goods being exported from Australia. (Note: 'transhipped' means the goods are unloaded in Australia for immediate re-loading onto another vessel or craft before export from Australia.)